IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7626 of 2001

AND

SPECIAL CIVIL APPLICATION No 7644 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRINCIPAL R D KANYA VIDYALAYA PRIMARY SECTION

Versus

JAYENDRAKUMAR VINODRAI

Appearance:

1. Special Civil Application No. 7626 of 2001

MR RR VAKIL for Petitioner No. 1-2

MR DIPAK R DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 09/07/2004

ORAL JUDGEMENT

1.0. In both these petitions the petitioners have challenged the common judgment and order passed by the Gujarat Primary Education Tribunal [hereinafter referred to as "the Tribunal"] dated 30th June, 2000 in Applications Nos. 42 of 1996 & 43 of 1996, whereby the Tribunal passed an order, directing the petitioner school to pay to the respondents difference of salary as per Government guidelines and to pay their current salary regularly every month by account payee cheque and also to provide details of their Provident Fund Account. The petitioners have also challenged the subsequent order dated 28th August, 2001, passed in Review Applications No.1 of 2001 & 2 of 2001, whereby the Tribunal has rejected the said Applications and confirmed the order dated 30th June, 2000.

2.0. The short facts of the case are as under :-

2.1. The respondents were appointed as Assistant Teachers with the petitioner no.1 - school on a monthly salary of Rs.1,000/- and Rs.1,200/- respectively. The salaries were paid to them in cash instead of through bank. The petitioner - school started deducting P.F. only from the month of December, 1995, details of which were not supplied to the respondents. The respondents, therefore, filed applications no. 42 of 1996 and 43 of 1996 on 14th March, 1996 before the Gujarat Primary Educational Tribunal alleging that the petitioner school is not paying the salary to them as per the Government Rules and Regulations.

2.2. The Tribunal passed common order dated 30th June, 2000 (annexure-A) in both the applications nos. 42 of 1996 and 43 of 1996 directing the petitioner - school to pay difference of salary to the respondents i.e. difference between the actual salary paid by the petitioner - school and the salary as per the Government Rules and Regulations from the date of appointment and further directed to give the details of Provident Fund to the respondents.

3.1. The petitioner - school filed Review Applications nos. 1 of 2001 and 2 of 2001, before the Tribunal for reviewing the order dated 30th June, 2000. However, the said applications came to be rejected by the Tribunal by its order 28th June, 2001 (annexure-B).

4.1. Meanwhile, the respondents preferred Misc. Civil Applications Nos. 143 of 2001 and 144 of 2001 before this Court for non-compliance of the order dated 30th

June, 2000 by the petitioner - school.

5.1. Heard Mr. R.R. Vakil learned advocate for the petitioner. He submitted that the respondents were appointed in the petitioner - school without following condition (1) of Schedule of the Bombay Primary Education Act and thus their initial appointment is void ab-initio. Moreover, the educational qualification of the respondents is graduation and as per condition (6) of Schedule-F of the Bombay Primary Education Act, the respondents are not entitled to be appointed as primary teachers. He submitted that the Tribunal has erred in passing ex-parte order dated 30th June, 2000 and should have allowed their Review Applications. It was submitted by Mr. Vakil that since the school-management was taken over by new Trustees, they were not aware of the pendency of the case before the Tribunal and, therefore, the Tribunal ought to have given opportunity to the petitioner - school to defend their case.

5.2. As against that, Mr. Dave learned advocate for the respondents, submitted that the Tribunal was justified in striking off the defence of the petitioners in view of the judgment of this Court dated 31st February, 1992 delivered in Misc. Civil Applications nos. 31 and 32 of 1992 wherein, this Court has in para 8 observed as under:-

"8. The provisions of the Bombay Primary Education Act clearly show that the Tribunal has been formed with the powers to decide the disputes between the teachers and the school management. Thus, there is an express grant of power. This express grant of power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Thus, the power also includes the power of doing all such acts, or of employing such means as are essentially necessary to its execution. Therefore, the Tribunal should ordinarily exercise its power of imposing effective and meaningful conditions even while issuing interim orders to see that the interim orders are complied with. This can and should be done by the Tribunals. We may illustrate as to what can be done by the Tribunal :

a) The Tribunal can direct the

opponent to remain present in court and report compliance of its interim order;

b) The Tribunal can direct that in case the amount is not paid as per the direction by its interim order, the amount shall carry interest at the appropriate rate which in the present day market condition can be between 15 to 21 per cent;

c) The Tribunal can and should indicate that in case there is failure to comply with its order, defence of the opponent may be struck off.

After giving an opportunity to the opponent, if the opponent fails to show sufficient cause relieving him from the consequences of the non-compliance of the order, its defence may be struck off. Later on in fit case on compliance of the order or any other suitable condition the opponent may be permitted to appear and defend;

d) The Tribunal in appropriate cases can award cost and in given cases, it can be even exemplary costs. Even for non-compliance of the interim orders, costs can be awarded.

This list is merely illustrative one and by no means should be treated as exhaustive. The Tribunal can and should act with innovative imagination and employ all necessary means to make the conferment of power meaning full and effective."

6.1. Having carefully gone through the record of this petition and having carefully considered the submissions made by both the learned counsel, it appears that there is nothing on record to show that in view of the guidelines issued by the Government, the Tribunal has called upon the petitioner - school after the Management was taken over by the new trustees on 17th April, 1999

before the ex-parte order was communicated to the petitioner - school. This Court by order dated 1st November, 2001 has directed the petitioner - school to pay the salary to the respondents regularly. As per the statement made by the learned advocates, recorded on 4th April, 2002, the said order dated 1st November, 2000 is complied with.

6.2. In that view of the matter, keeping in mind that the petitioner - school was not allowed to defend the case as referred hereinabove, in my opinion, they should be given a chance to represent their case before the Tribunal.

7.1. In the result, the petition is partly allowed. The orders of the Tribunal dated 30th June, 2000 and 28th August, 2001, are hereby quashed and set aside and the matter is ordered to be remanded to the Tribunal for a fresh decision after hearing the petitioner - school. The parties are allowed to lead evidence and the Tribunal will hear and conclude the proceedings on or before 31st December, 2004. Rule is made absolute to the aforesaid extent. However, as the respondents are required to attend these proceedings because of the fault of the management, each of the respondent will be paid Rs.3,500=00 [Rs. Three Thousand Five Hundred Only.] by way of costs.

7.2. At this stage Mr. Dave requested that the Tribunal may be directed to call for the other applications pending before the Tribunal being Applications nos. 20 of 2002 and 21 of 2002, so that all the matters can be heard together. It will be open for the petitioner - school to file appropriate application for hearing all the matters together and, if such application is filed, the Tribunal will hear all the four applications together and will decide the same as directed hereinabove.

[K.S. JHAVERI, J.]

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